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August 13, 2003

Leslie Smith  
Federal Communications Commission  
Room 1-A804, 445 12th Street SW.  
Washington, DC 20554

Re: Telephone Consumer Protection Act Regulations  
CG Docket No. 02-278, FCC 03-153

Dear Mr. Smith:

The California Bankers Association ("CBA") is grateful for this opportunity to provide comments on the FCC's revised rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). CBA is a nonprofit professional association incorporated in California in 1891, and represents virtually all of the commercial banks and savings institutions (hereafter, "banks") in the state.

CBA supports reasonable regulation of the use of facsimile broadcasts to conduct unsolicited marketing for many of the reasons discussed in the FCC's rulemaking. The delivery of fax messages utilizes and occupies the recipient's fax machine and paper, and could result in telecommunication charges to the recipient. The time used in receiving faxes cannot be used by the recipient to send faxes or, in some instances, to make or receive calls. Nevertheless, we believe the FCC's rule requiring any person to obtain a signed, written consent to deliver a fax advertisement in all instances, including to existing customers, is overbroad and, in some instances, could thwart consumers' interests. We are also concerned about application of the rules to non-profit membership organizations like CBA.

### ***Banks***

Under the FCC's rule, if a consumer calls a bank, whether or not in response to an advertisement, and requests that a rate sheet on certificates of deposit be faxed, the bank would, in turn, have to ask the consumer to draft a written request, sign it, and then fax it back before the bank can furnish the rate sheet. In the alternative, the bank would have to ask the consumer

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to send an electronic message to a certain email address and ensure that it is "signed" within the meaning of state or federal laws recognizing electronic signatures. This rule, intended to protect persons from unsolicited faxed advertisements, is overly broad because it could also frustrate consumers' attempt to obtain information that they specifically request, and hinder banks and other businesses from engaging in routine communications with potential and existing customers.

The rule would result in significant administrative, legal, and economic burdens that are not offset by the benefits the rule is intended to provide. Banks and other businesses would be required to train all employees who potentially communicate with customers on what constitutes consent, and what constitutes an advertisement. Banks must develop a system, along with policies and procedures, to collect and maintain files of consents in a manner sufficient to support the legality of each faxed advertisement that is sent. Even when fully implemented, the effect on customer service would be deleterious.

Because banks' customer relationships are ongoing and not characterized by a single or occasional purchase of a product or service, banks are in regular communications with their customer base. As to many bank customers, patterns of communication have developed over years and even decades. The FCC should not dictate a single, inflexible rule to apply in all instances, including in those situations in which consent has been established through long term relationships.

The FCC's stringent consent rule would appear to be developed in response to the actions of bad actors, and does not consider those businesses like banks that already maintain policies to protect the interests of their own customers. Many banks already maintain "do-not-solicit" lists that encompass not just calls, but all forms of communications for marketing purposes. Banks take such measures not only to comply with laws, but also because doing so is good business. For example, many banks allow customers to request that personal information not be shared with affiliates or financial institution partners even though, under the Gramm-Leach-Bliley Act, customers do not have the right to opt out of such information sharing. The FCC rule should allow for flexibility for businesses to communicate with their own customers by fax, or in the alternative, to operate under more general and more workable guidelines on obtaining consent.

### *Associations*

Similarly, non-profit organizations should not be subject to the do-not-fax prior consent rule. Many associations, such as CBA, conduct some marketing and sales functions as a way to deliver goods and services at member prices, and as a way to reduce membership dues. CBA currently endorses almost 10 banking-related products and services, and sponsors a group health insurance plan. CBA also organizes several annual educational seminars and scores of other educational events. The availability of these products and services is a major reason that banks join CBA. One of the strategic goals at CBA is to increase taxable revenue from

products and services so that such income surpasses membership dues income as a percentage of total revenue.

The FCC rule could require CBA to obtain written consent to deliver faxes even with respect to such core activities as annual meetings and conventions, events that go to the heart of why banks join CBA. Because, like most non-profits, CBA is a membership organization, its members have significant influence over the association's policies. Therefore the kind of abuse that the rule seeks to address is not present with CBA and associations like it. For these reasons, CBA requests that the stringent prior consent rule for faxes not be applied to member communications by non-profit organizations.

CBA appreciates this opportunity to provide these comments to the FCC. If you have any questions or comments, please contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leland Chan', written in a cursive style.

Leland Chan  
SVP/General Counsel